

NOT FOR PUBLICATION

SEP 15 2004

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MOISES RIVERA,

Defendant - Appellant.

No. 03-10309

D.C. No. CR-01-00419-CRB-02

MEMORANDUM*

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE LUIS MEDINA ALVARADO,

Defendant - Appellant.

No. 03-10333

D.C. No. CR-01-00419-1-CRB

Appeal from the United States District Court
for the Northern District of California
Charles R. Breyer, District Judge, Presiding

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Submitted August 11, 2004**
San Francisco, California

Before: **PREGERSON, KOZINSKI and HAWKINS**, Circuit Judges.

1. The district court did not err in denying defendants' motion to dismiss for violation of the Speedy Trial Act, 18 U.S.C. § 3161(b). See United States v. Gastelum-Almeida, 298 F.3d 1167, 1173 (9th Cir. 2002) (citing United States v. Heldt, 745 F.2d 1275, 1279–80 (9th Cir. 1984)).

2. The district court's response to the jury's questions was not an abuse of discretion. See United States v. Romero-Avila, 210 F.3d 1017, 1024 (9th Cir. 2000).

3. Nor did the district court err in denying defendant Rivera an entrapment instruction. See United States v. Becerra, 992 F.2d 960, 963 (9th Cir. 1993). Rivera did not present even "slight evidence . . . that [he] was initially unwilling to commit the crime, or that Government involvement planted the criminal design in [his] mind." See United States v. Fleishman, 684 F.2d 1329, 1342 (9th Cir. 1982).

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

4. Defendants have requested leave to file a supplemental brief addressing the effect of Blakely v. Washington, 124 S. Ct. 2531 (2004), on their sentences. We will address defendants' motion after the Supreme Court decides United States v. Booker, 375 F.3d 508 (7th Cir. 2004), cert. granted, 73 U.S.L.W. 3074 (U.S. Aug. 2, 2004) (No. 04-104), and United States v. Fanfan, No. 03-47, 2004 WL 1723114 (D. Me. June 28, 2004), cert. granted, 73 U.S.L.W. 3074 (U.S. Aug. 2, 2004) (No. 04-105). See United States v. Castro, No. 03-50444 (9th Cir. Aug. 27, 2004).